

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA,  
NORTHERN DIVISION**

LEE HARTWELL,	)	Case No.: 2:06-CV-518
	)	
Plaintiff,	)	<b>CITY OF MONTGOMERY'S and KELLY GORDON'S OBJECTIONS TO PLAINTIFF'S EXHIBIT LIST</b>
	)	
vs.	)	
THE CITY OF MONTGOMERY and THE	)	
PERSONNEL BOARD FOR THE CITY AND)	)	
COUNTY OF MONTGOMERY, and KELLY	)	
GORDON	)	
	)	
Defendants.	)	
	)	
	)	

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COME NOW the defendants City of Montgomery and Kelly Gordon, by and through undersigned counsel, and lodge the following objection to the documents listed in Plaintiff's Exhibit List.

Item One. Fire Department Tattoo Polciy: Defendants object to the admission at trial of item one of Plaintiff's Exhibit List. The substance of the tattoo/brand and body piercing policy of the Montgomery Fire Department is immaterial to the only issues before the jury in this case—1) whether or not the plaintiff was demoted in retaliation for having made a complaint about Gordon's tattoo, and 2) whether or not the adverse employment action would have been taken despite that complaint. While the alleged protected speech in this case accused Gordon of violating the tattoo policy, admission of the policy itself will likely serve to divert the jury's attention away from the ultimate issue and focus it on whether or not the tattoo itself complies with the policy. This would have no probative value to the case at bar and would prejudice the defendant Gordon. The only probative issues in a retaliation case like this are what speech was made—its form, content, and context—whether it was constitutionally protected, and whether it

was the motivating factor in some adverse employment action taken by the defendant. Berdin v. Duggan, 701 F.2d 909, 911 (11<sup>th</sup> Cir., 1983). The tattoo policy has no place in that analysis.

Respectfully submitted.

/s/ Wallace D. Mills  
Wallace D. Mills (MIL 090),  
Attorney for the City of Montgomery

OF COUNSEL:

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of December, 2007, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system which will send notification of such filing to the following parties or counsel:

J. Bernard Brannan, Jr., Esq.  
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Robert D. Segal  
Copeland, Franco, Screws & Gill, P.A.  
P.O. Box 347  
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and I hereby certify that I have also mailed by United States Postal Service the document to the above-named non-CM/ECF participants:

/s/ Wallace D. Mills  
OF COUNSEL